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QUESTIONS PRESENTED

1. Whether enforcement of the Origination Clause of the Constitution, Art. I, § 7, cl. 1 presents a nonjusticiable political question?

2. Whether 18 U.S.C. § 3013, which directs the federal courts to impose special assessments on defendants convicted of federal offenses, was enacted in violation of the Origination Clause of the Constitution, Art. I, § 7, cl. 1?

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CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Article I, § 7, cl. 1 of the United States Constitution requires:

> All Bills for raising Revenue shall originate in the House of Representatives; but the Senate may propose or concur with Amendments as on other Bills.

Title 18, United States Code, § 3013, as enacted by the Victims of Crime Act of 1984, Pub. L. No. 98-473, Title II, ch. XIV, § 1405, 98 Stat. 2174-2175, provided:

> § 3013. Special assessment on convicted persons
>
> (a) The court shall assess on any person convicted of an offense against the United States—
>
> (1) in the case of a misdemeanor—
>
> (A) the amount of $25 if the defendant is an individual; and
>
> (B) the amount of $100 if the defendant is a person other than an individual; and
>
> (2) in the case of a felony—
>
> (A) the amount of $50 if the defendant is an individual; and
>
> (B) the amount of $200 if the defendant is a person other than an individual.
>
> (b) Such amount so assessed shall be collected in the manner that fines are collected in criminal cases.[1]

[1] 18 U.S.C. § 3013 was amended by Pub. L. No. 100-185, § 3, Dec. 11, 1987, 101 Stat. 1279, and by Pub. L. No. 100-690, Title VII, §§ 7082(b), 7085, Nov. 18, 1988, 102 Stat. 4407, 4408.

The December 1987 amendments added subsections (c) and (d) providing that the obligation to pay an assessment ceases five years after the date of the judgment and that an offense under section 13 of

SUMMARY OF ARGUMENT

1. The Court of Appeals correctly decided that the Origination Clause is subject to judicial review and does not present a nonjusticiable "political question." An analysis of the factors set forth in *Baker* v. *Carr*, 369 U.S. 186 (1962), compels the conclusion that judicial interpretation of the Origination Clause is not precluded by the political question doctrine. Nothing in the text of the Constitution commits to Congress the sole authority to decide whether an act violates the Origination Clause. Congress has relied on judicial interpretations in deciding whether a bill violates the Origination Clause. Interpreting the Origination Clause does not require the Court to make policy determinations. The ability of the House to protect and assert its prerogative under the Origination Clause cannot preclude the Court from performing its historical function of interpreting the Constitution. The Origination Clause is not simply a rule of parliamentary procedure or

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Title 18, United States Code (the Assimilative Crimes Act) is an offense against the United States. The five year limitation provided in subsection (c) is shorter than the twenty year statute of limitations applicable to fines. See 18 U.S.C. § 3565(h) (1985), repealed and replaced by 18 U.S.C. § 3613(b) (1987). The provision regarding applicability to Assimilative Crimes under 18 U.S.C. § 13 was added in order to overturn court decisions that had held the assessment not applicable to such convictions. H.R. Rep. No. 100-390, at 4.

The November 1988 amendments changed the amounts of the assessments applicable to various levels of cases and specified that the five year statute of limitations applies to all assessments regardless of the date of imposition. Pub. L. No. 100-690, § 7085, 102 Stat. 4408.

Neither the December 1987 nor November 1988 amendments altered the directive in section 3013(a) that the court *shall* assess the applicable amount on any person convicted of an offense against the United States.

only a "matter of sequence"; it is a constitutional rule of accountability for revenue legislation as well as a balance of the power between the House and Senate. The Clause provides direct protection to individual citizens by insuring that the representatives most directly responsive to the people take the responsibility of taking money from the people through taxation. Judicial interpretation of the Origination Clause presents no more danger of "multifarious pronouncements" than in any instance where a court reviews a law.

2. Section 3013 violates the Origination Clause.

a. The purpose of section 3013 is to raise revenue for the general obligations of government. Even if the purpose of section 3013 is a more limited or "special" purpose, it is not exempt from the Origination Clause. The funds are not designed to benefit the class of individuals levied against and are not used to offset costs of a service that benefits those individuals who pay the charge. *See Millard* v. *Roberts*, 202 U.S. 429 (1906); *Twin City Nat'l Bank* v. *Nebecker*, 167 U.S. 196 (1897); *United States* v. *Norton*, 91 U.S. 566 (1875). Finally, section 3013 is not a penalty provision. It is not located in any sentencing provision of Title 18, nor is it a viable sentencing option for federal judges. The statute does not refer to penalty assessments, but rather, to *special* assessments.

b. Section 3013 originated in the Senate. The Senate was the first body to place the special assessment provision into the legislation that was ultimately enacted. On September 25, 1984, the House passed H.R.J. Res. 648, without a special assessment provision. On October 4, 1984, the Senate amended H.R.J. Res. 648, adding the special assessment provision. The fact that the provision the Senate inserted into H.R.J. Res. 648 was identical to

H.R. 5690, a bill the House passed but never became law, is not determinative of where the provision originated. The bright line test of which body placed the measure into the legislation that was ultimately enacted is the only practical and reasonable test for origination.

3. The Senate's addition of section 3013 to H.R.J. Res. 648 was not a permissible amendment. The Senate may only make revenue raising amendments to "revenue raising bills." Because H.R.J. Res. 648 was not a "revenue raising bill", the Senate's action in amending it with a revenue raising provision violated the Constitution. To hold that the Origination Clause will not invalidate a Senate amendment to a House bill that includes appropriations is to equate appropriations bills with revenue raising bills, an issue that need not be addressed by this case.

ARGUMENT

I. ENFORCEMENT OF THE ORIGINATION CLAUSE DOES NOT IMPLICATE THE "POLITICAL QUESTION DOCTRINE."

The Court of Appeals correctly held that the Origination Clause is subject to judicial review and enforcement; it does not present a nonjusticiable political question. A "political question" arises only when one of the following circumstances is present:

> a textually demonstrable constitutional commitment of the issue to a coordinate political department; or a lack of judicially discoverable and manageable standards for resolving it; or the impossibility of deciding without an initial policy determination of a kind clearly for nonjudicial discretion; or the impossibility of a court's undertaking independent resolution without expressing lack of the respect due coordinate branches of government; or an unusual need for unquestioning adherence to a political decision already made; or the potentiality of embarrassment from multifarious pronouncements by various departments on one question.

Baker v. *Carr*, 369 U.S. 186, 217 (1962).

Unless one of these circumstances is "inextricable from the case at bar," the issue is justiciable and not within the political question doctrine. *Id.* at 217. The principle of separation of powers which demands that the judiciary refrain from resolving issues that are "political", *e.g.*, *O'Donoghue* v. *United States*, 289 U.S. 516, 503 (1933),[2] must be balanced against the Judiciary's responsibility to interpret the Constitution, *e.g.*, *Powell* v. *McCormack*, 395 U.S. 486 (1969); *Marbury* v. *Madison*, 5 U.S. (1 Cranch) 137 (1803). However, "[n]o policy underlying the political question doctrine suggests that Congress or the Executive, or both acting in concert and in compliance with Art. I, can decide the constitutionality of a statute; that is a decision for the courts." *INS* v. *Chadha*, 462 U.S. 919, 941-42 (1983).

Petitioner acknowledges that several considerations "militate against a finding of nonjusticiability" in this case, i.e. (1) the Court has entertained Origination Clause challenges in the past; (2) nothing in the text of the Clause explicitly provides for resolution of Origination Clause issues by only the Congress or Executive; and (3) the general nature of the inquiry is one that is familiar to the courts and often central to the judicial function. [Pet. Br.

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[2] The Court stated: "The Constitution, in distributing the powers of government, creates three distinct and separate departments . . . . This separation is not merely a matter of convenience or of governmental mechanism. Its object is basic and vital . . . . namely, to preclude a commingling of these essentially different powers of government in the same hands." 289 U.S. at 530.

8-9]. Despite this, Petitioner asserts that an Origination Clause challenge presents a nonjusticiable political question.[3] Contrary to Petitioner's assertion, none of the *Baker* criteria are satisfied in this case.

1. There is no "textually demonstrable constitutional commitment" of the interpretation of the Origination Clause to the legislative branch. Whether there is a "textually demonstrable constitutional commitment of the issue to a coordinate political department" and the scope of any such commitment is the threshold question to be addressed. *Powell* v. *McCormack*, 395 U.S. 486, 521 (1969). Such analysis is itself a "delicate exercise in constitutional interpretation, and is a responsibility of this Court as ultimate interpreter of the Constitution." *Id.* (quoting from *Baker* v. *Carr*, 369 U.S. at 211).

Nothing in the text of the Constitution commits to Congress the sole authority to decide whether an act violates the Origination Clause. Indeed, Petitioner concedes that the text of the provision does not explicitly state that Congress or the Executive should resolve questions of interpretation. [Pet. Br. 9]. In addition, this Court has previously considered Origination Clause issues on four occasions in the past and has discussed its meaning on a fifth occasion.[4] In fact, several federal courts of

[3] Petitioner first raised the issue of nonjusticiability in its petition for rehearing with suggestion for rehearing *en banc*, filed after the Court of Appeals rendered its decision in *Munoz*. The government also did not assert nonjusticiability as a defense to the Origination Clause argument presented by Sperry Corporation in a case before this Court. *United States* v. *Sperry*, No. 88-952 (U.S. S. Ct. Nov. 28, 1989) (see Brief of the United States at 48-49).

[4] See Pet. Br. at 8, citing *Rainey* v. *United States*, 232 U.S. 310 (1914); *Flint* v. *Stone Tracy Co.*, 220 U.S. 107 (1911); *Millard* v. *Roberts*, 202 U.S. 429 (1906); *Twin City Nat'l Bank* v. *Nebecker*, 167 U.S. 196 (1897); and *United States* v. *Norton*, 91 U.S. (1 Otto) 566 (1875).

appeals to consider the issue have found the Origination Clause justiciable.[5] The states that have similar clauses in their own constitutions have generally found the clause justiciable.[6]

The House itself has relied on judicial interpretation in debating whether particular legislation is a violation of the Origination Clause. Members of the House have recognized the role of the courts in interpreting the Clause, a recognition that has contributed to the House strictly adhering to the constitutional mandate. *See, e.g.*, 2 A. Hinds, *Hinds' Precedents of the House of Representatives* § 1494, at 964-67 (1907) [hereinafter 2 Hinds] (discussion of Justice Story's definition of "revenue" and Supreme Court interpretation of the term in *United States* v. *Norton* and *Twin City Nat'l Bank* v. *Nebecker;* 131 Cong. Rec. H9478-03 (1985) (consideration of Deficit Reduction Amendments of 1985 and recognition that treatment of certain provisions was consistent with Supreme Court

[5] *See, e.g.*, *United States* v. *Newman*, 889 F.2d 88 (6th Cir. 1989) (specifically holding Origination Clause justiciable); *United States* v. *Simpson*, 885 F.2d 36 (3d Cir. 1989) (same); *Armstrong* v. *United States*, 759 F.2d 1378 (9th Cir. 1985) (same): *Wardell* v. *United States*, 767 F.2d 203 (8th Cir. 1985) (per curiam) (adjudicating TEFRA claim on the merits); *Heitman* v. *United States*, 753 F.2d 33 (6th Cir. 1984) (per curiam) (same); *Moore* v. *House of Representatives*, 733 F.2d 936, 961 n.6 (D.C. Cir. 1984) (Scalia, J., concurring) (a private party injured by the legislation can litigate issue). *But see Texas Ass'n of Concerned Taxpayers, Inc.* v. *United States*, 772 F.2d 163 (5th Cir. 1985) (Origination Clause nonjusticiable).

[6] The vast majority of states with Origination Clauses in their constitutions have not expressed any reservations about the justiciabilitiy of violations. *See* J.M. Medina, *The Origination Clause in the American Constitution: A Comparative Survey*, 23 Tulsa L.J. 190-224 (1987) [hereinafter Medina].

decisions); 66 Cong. Rec. 2,941-2,965 (1925).[7]

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[7] There was a lengthy debate in 1925 in the House of Representatives over a Senate bill establishing rates of postage. Mr. Ramseyer "realize[d] that the House can arbitrarily place its own interpretation upon [the Origination Clause]. It can send this bill back for any reason or for no reason, and the Senate has no appeal from the action of the House. The real issue before us is, would the bill S. 3674, which the pending resolution undertakes to return to the Senate, if enacted into law, be unconstitutional because it originated in the Senate?" 66 Cong. Rec. at 2944. Mr. Garrett of Tennessee recognized the "question has to be decided somewhere, somehow. It can be decided here or it can be decided finally and officially in the Supreme Court of the United States." *Id.* at 2949. Mr. Connally of Texas argued "[i]t is our duty to meet this bill at the threshold. The courts can only decide at some indefinite time in the future." *Id.* at 2950. Mr. Crisp predicted "the mail-order houses, like Sears, Roebuck & Co. and other concerns, whose postage is increased, [will] test the constitutionality of the law in the Supreme Court of the United States, and in my judgment whenever that great court decides the legal question the court will declare it unconstitutional . . . . Should we pass it, the law will be void and of no legal effect, for it will be unconstitutional. For these reasons I shall vote to return it to the Senate." *Id.* at 2951. Mr. Kelly acknowledged "[t]he Supreme Court is going to have this bill, if it should be passed as a Senate measure, and decide whether it is a revenue bill or not. That means a date long distant from to-day." *Id.* at 2956. Mr. Madden: "We ought not to take any chances on some court later on deciding a salary bill with a revenue bill attached to it to be unconstitutional . . . the best way to get those salaries increased is to sustain this committee and to send the bill back to the Senate . . .]." *Id.* Mr. Black of Texas advised "[e]ach Member must decide it for himself in the light of the precedents of the House and the decisions of the Supreme Court of the United States . . . . Under our system of government the courts are the final arbiters upon questions of constitutional law, and to their construction Congress, as well as everybody else, should conform." *Id.* Mr. Stengle asked "why, [], should we insist on passing this measure as it now appears before us, when we can send it back to the Senate and then do the thing right, removing all doubt and finally passing a bill which can stand the test in any court." *Id.* at 2964. Mr. Longworth repeated "[t]his bill is of at least doubtful constitutionality. It will have to be tested by the Supreme Court of the United States, and if the Supreme Court should hold that it is unconstitutional your whole bill falls by the wayside and you hurt infinitely the chances of passing a similar bill raising postal salaries in the future." *Id.* at 2964. The resolution to return bill to the Senate was passed. *Id.*

2. There are judicially discoverable and manageable standards for interpreting the Origination Clause which do not involve policy determinations of a kind clearly for nonjudicial discretion. Petitioner argues it is not easy to formulate judicially manageable standards to determine whether a bill is "for raising Revenue" and that litigation will force a court to make complicated fiscal and economic assumptions that may vary from year to year. [Pet. Br. 14-15].[8] Petitioner also asserts that it will be "difficult" for courts to determine where a bill "originated" and whether an omnibus bill should have its component parts analyzed separately to determine their origins. [Pet. Br. 15-16].

Interpreting the meaning of words, e.g., revenue and originate, is the business of the courts. Determining whether statutory provisions violate the Constitution is a judicial function, regardless of the level of difficulty. *Marbury* v. *Madison*, 5 U.S. (1 Cranch) 137 (1803). This Court is repeatedly called upon to make difficult decisions even in the face of "political consequences." *E.g. Baker* v. *Carr* (state apportionment statute); *Reynolds* v. *Sims*, 377 U.S. 533 (1964) (state legislative redistricting plan). The

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[8] Petitioner attempts to illustrate the point by reference to the Origination Clause challenges to the Tax Equity and Fiscal Responsibility Act (TEFRA). [Pet. Br. note 14] However, the TEFRA cases reflect the ease with which the courts dealt with the issue. The circuits uniformly agreed that "Bills for raising revenue" referred in general to all laws relating to taxes. *See Armstrong* v. *United States*, 759 F.2d at 1381; *Wardell* v. *United States*, 757 F.2d at 205; *Heitman* v. *United States*, 753 F.2d at 35.

House has been able to develop standards for determining whether a bill "raises revenue," where a bill "originates" and what is a "bill." *See, e.g.*, 2 Hinds, *supra* p. 8, §§ 1480-1500; 6 C. Cannon, *Cannon's Precedents of the House of Representatives* §§ 314-322 (1935) [hereinafter 6 Cannon]. Indeed, the House has taken significant guidance from the courts, guidance that has helped encourage compliance with the Constitution and should help alleviate intracongressional tensions. *See, e.g.*, note 7, *supra*.

Contrary to Petitioner's assertions, cases that turn on constitutional interpretation generally do not involve judicially unmanageable standards. *Powell* v. *McCormack*, 395 U.S. 486, 549 (1968). Not only has this Court already addressed several Origination Clause disputes, other state and federal courts have rendered decisions on the issue.[9] In addition the Court can examine the records of the Constitutional Convention in determining how to apply the Clause. *Powell* v. *McCormack*, 395 U.S. at 521-47.

Petitioner also speculates, without example, that the Origination Clause raises questions of definition and policy difficult for courts to resolve. [Pet. Br. 14]. No policy determinations need be made because determining the definition of the words in the Origination Clause presents purely legal questions. The "policy" determinations were made by the Framers who declared that "Bills for raising revenue must originate in the House of Representatives . . . ." Contrary to Petitioner's argument, the Court of Appeals correctly noted that the analysis of an Origination Clause issue is straightforward and tracks the language of the Clause. [Pet. App. 6a]. The Court must decide whether a Bill for raising revenue originated in the

[9] *See supra* notes 4 through 6.

House or whether the Senate bill amended a House revenue bill. This Court has certainly not avoided interpreting complicated tax laws or even complex treaties, e.g., *Japan Whaling Ass'n* v. *American Cetacean Soc'y*, 478 U.S. 221 (1986).

3. Undertaking independent resolution of this issue would not express a lack of respect due coordinate branches of government. Nothing in the Clause itself provides for exclusive guardianship by the House. The House has not assumed that it is the final arbiter of the Origination Clause. *See supra* p. 7. The "threat" of litigation has in fact caused the House to seriously consider whether certain legislation violates the Clause. *See supra* note 7. Although the House has developed procedures to guard its constitutional responsibility to originate revenue bills, the House has also looked to court decisions for guidance in determining whether to return bills to the Senate. Certainly members of the Congress must make independent and individual judgments regarding the constitutionality of legislation. *United States* v. *Nixon*, 418 U.S. 683, 703 (1974). These representatives take the same oath to support and defend the Constitution as do the judges.[10] U.S. Const. Art. VI, cl. 3. However, this consti-

[10] The Senate has also considered the constitutional requirement of the Origination Clause in its discussion of legislation. *See, e.g.*, 6 Cannon, *supra* p. 11, ch. 180, §§ 320, 321 (Senate declined to consider a bill challenged as an infringement on the right of the House to originate revenue measures); 2 Hinds, *supra* p. 8, ch. 47, §§ 1483, 1497 (bill to abolish a duty was refused consideration in the Senate, one objection being that the Senate had no right to originate such a measure; instances where the Senate has acquiesced in the constitutional requirement as to revenue bills, while holding to a broad power of amendment).

tutional obligation does not insulate actions of Congress from judicial review.

The fact that the House has resources to protect and assert its interests is irrelevant to the constitutional obligation of the Court to interpret the Constitution. The Court must interpret and enforce the Constitution even if both of the other branches appear to give up certain constitutional obligations or powers. For example, in *Buckley* v. *Valeo*, 424 U.S. 1 (1976), a portion of the Federal Election Campaign Act of 1971 was found to be a violation of the Presidential power to appoint all "Officers of the United States," Art. II, § 2, cl. 2 even though the bill passed both houses of congress and was signed by the President. Thus, the Court struck as an unconstitutional infringement on powers of the Executive branch, a law that the President signed. This was not viewed as a lack of respect for a coordinate branch of government. Likewise, in *INS* v. *Chadha*, the congressional veto provision of section 244(c)(2) of the Immigration and Nationality Act was found to violate the Presentment Clauses, Art. I, § 7, cl. 2, 3 and a violation of the doctrine of separation of powers. In so holding, the Court protected constitutional responsibilities of both the legislative and executive branches that had been given up by both.[11]

This case turns on nothing more than an interpretation of the Constitution and a statute enacted by the Congress.

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[11] *See also, e.g.*, Medina, *supra* note 6, at 202-03, 210 n.281, citing *H.A. Thierman Co.* v. *Commonwealth*, 123 Ky. 740 (1906) (court not bound by fact that the House, in passing the Senate bill, did not view the bill as an infringement on its prerogative to originate revenue bills); *Niemic* v. *King*, 109 N.H. 586 (1969) (opinion expressed by the court did not "detract from the power of the house to settle the rules of proceedings in their own house").

"Such a determination falls within the traditional role accorded courts to interpret the law, and does not involve a 'lack of the respect due [a] coordinate [branch] of government,' nor does it involve an 'initial policy determination of a kind clearly for nonjudicial discretion.'" *Powell* v. *McCormack*, 395 U.S. at 547 (citation omitted). Resolution of litigation challenging the constitutional authority of the House cannot be evaded by this Court because of political implications. *INS* v. *Chadha*, 462 U.S. at 919.

Contrary to Petitioner's assertion, the Origination Clause is not simply a rule of parliamentary procedure or "strictly a matter of sequence." [Pet. Br. 11-12]. It is a constitutional rule of accountability for revenue legislation as well as a balance of the power between the House and Senate. If the Origination Clause were designed to be a mere procedural rule it would not have been necessary to insert it into the Constitution. At the time of the Constitutional Convention, the origination of money bills in the popular House was the common practice. D. Watson, *The Constitution of the United States* at 343 (1910). Each House was given constitutional authority to determine the "Rules of its Proceedings," Art. I, § 5, cl. 2, and could have easily continued to operate under accepted procedure. Yet, the Framers of the Constitution found it necessary to provide the revenue raising restriction.

The Origination Clause was hotly debated during the Constitutional Convention and appeared to be a concession by the smaller states to the larger states in exchange for an equal vote in the Senate and certain powers in the Senate, e.g., the power of advice and consent on treaties and appointments. 2 M. Farrand, *Records of the Federal Convention of 1787* (1949) [hereinafter 2 Farrand], at 230-234 (Madison), 262-263 (Madison), 297 (Madison), 509 (Madison), 514 (Madison), 638 (Mason).

Such debate and concession reflects the significance of the Origination Clause as a matter of accountability and balance of power between the two houses. As Madison recognized:

> The house of representatives can not only refuse, but they alone can propose the supplies requisite for the support of government. They in a word hold the purse; that powerful instrument by which we behold, in the history of the British constitution, an infant and humble representation of the people, gradually enlarging the sphere of its activity and importance, and finally reducing, as far as it seems to have wished, all the overgrown prerogatives of the other branches of the government. This power over the purse, may in fact be regarded as the most compleat and effectual weapon with which any constitution can arm the immediate representatives of the people, for obtaining a redress of every grievance, and for carrying into effect every just and salutary measure.

The Federalist No. 58 at 394 (J. Madison) (J. Cooke ed. 1961).[12]

Petitioner argues the Clause does not provide direct protection to individual citizens and its significance has diminished with the change to a popularly elected Senate. [Pet. Br. 13]. This argument ignores the purpose of the Clause. The Origination Clause insures that the representatives most directly responsive to the people take the responsibility of taking money from the people through

[12] Petitioner inappropriately focuses on the balance of power issue and attempts to diminish the significance of the Origination Clause in equalizing the match between the House and Senate. [Pet. Br. 13-14, note 12]. This focus ignores the significance of the more immediate popular control that can be exercised over representatives elected every two, rather than six, years.

taxation.[13] Members of the House of Representatives are elected every two years and as a result are more immediately and directly accountable for their actions. The people can express displeasure by effecting a change in the House of Representatives every two years. The Senate is far more insulated in that only one-third of its membership can be changed every two years.[14] The House has recognized the value of the Origination Clause even after popular elections of Senators were allowed:

> It gives us a position of more importance and greater responsibility than any other department of it, and calls for the most scrupulous care on our part that we shall not be faithless to our exalted trust. Nor has our responsibility been diminished in relation to that of the Senate by the fact that in late years, under a change in the Constitution, the Senators are elected by the people as well as the House. That was only a change in the mode of their election; not a change in the powers of the Senate, nor a change in the constituency whom it represents.

[13] See excellent and thorough discussions of the history of the Origination Clause and its significance in the Constitutional Convention in J.L. Hoffer, *The Origination Clause and Tax Legislation*, B.U.J. Tax Law 1 (1984); Comment, *The Origination Clause, the Tax Equity and Fiscal Responsibility Act of 1982, and the Role of the Judiciary*, 78 Nw. U.L. Rev. 419, 423-31 (1983); Medina, *supra* note 6, at 170-72.

[14] James Madison recognized the significance of placing the origination power in the more immediate representatives of the people:

> [B]ecause they were chosen by the People, and supposed to be best acquainted with their interests, and ability. In order to make them more particularly acquainted with these objects, the democratic branch of the Legislature consisted of a greater number, and were chosen for a shorter period, so that they might revert more frequently to the mass of the People.

3 M. Farrand, *Records of the Federal Convention of 1787*, App. A, CCXLII at 356 (James Madison in the House of Representatives).

See 66 Cong. Rec. 2948 (comments of Rep. Tucker).

4. There is no need for unquestioning adherence to a political decision already made, nor is there a potential for embarrassment from "multifarious pronouncements" by various departments. *Baker* v. *Carr*, 369 U.S. at 217. These two factors typically arise in circumstances where the Court is called upon to act in matters of foreign affairs, see, e.g., *Goldwater* v. *Carter*, 444 U.S. 996 (1979) (four-member plurality concluding that termination of a mutual defense treaty with the Republic of China presents a nonjusticiable political question), or where the issues involve the relationship between the states and the federal constitution, e.g., *Luther* v. *Borden*, 48 U.S. (7 How.) 1 (1849) (Guaranty Clause presents nonjusticiable political question); *Coleman* v. *Miller*, 307 U.S. 433, 450 (1939) (determination of whether constitutional amendment lost vitality prior to the required state ratifications is a nonjusticiable political question). Even when foreign relations are involved, this Court has found its obligation to interpret the law paramount to the political overtones or position of the Congress and the Executive. *See Japan Whaling Ass'n* v. *American Cetacean Soc'y*, 478 U.S. at 230 (determining challenge to the Secretary of Commerce's decision not to certify Japan for harvesting whales in excess of International Whaling Commission quotas not nonjusticiable political question).

There is no more danger of "multifarious pronouncements" here than in any instance where a court reviews a law passed by the Congress. The whole concept of judicial review involves another view of legislation beyond an advisory opinion. It is the constitutional obligation of the Judiciary to interpret the laws and decide whether they comply with the Constitution. No unusual political embarrassment can result from a judicial striking of a

statute enacted in violation of the Origination Clause; the alternative is to deny judicial review of a congressional violation of the Constitution.

II. SECTION 3013 VIOLATES THE ORIGINATION CLAUSE.

A. The Special Assessment Provision Is A "Bill[] For Raising Revenue" Within The Meaning Of The Origination Clause.

Revenue bills within the meaning of the Origination Clause are "those that levy taxes in the strict sense of the word, and are not bills for other purposes which may incidentally create revenue." *United States* v. *Norton*, 91 U.S. 566, 569 (1875); *Twin City Nat'l Bank* v. *Nebecker*, 167 U.S. 196, 203 (1897); *see also* Story, *Commentaries on the Constitution* 2 § 877 (1833), found in 2 P. Kurland & R. Lerner, *The Founders' Constitution* 387 (1987). A revenue bill is one "made for the direct and avowed purpose of creating revenue or public funds for the service of the government." *Id.* The test is whether the measure raises revenue for the sake of raising revenue for governmental use, or whether it raises revenues in the course of providing a service or achieving a regulatory end:

> No one supposes, that a bill to sell any of the public lands, or to sell public stock, is a bill to raise revenue, in the sense of the Constitution. Much less would a bill be so deemed, which merely regulated the value of foreign or domestic coins, or authorized a discharge of insolvent debtors upon assignments of the estates to the United States, given a priority of payment to the United States in cases of insolvency, although all of them might incidentally bring revenue into the Treasury.

Story, § 877. Revenue bills have been interpreted to include those that relate to revenue matters, not just those that increase revenue. *Armstrong* v. *United States*

("Bills for raising Revenue" does not refer only to laws increasing taxes but to all laws relating to taxes, including those that decrease taxes); *Wardell* v. *United States* (same); *Heitman* v. *United States* (same).

The distinction between revenue measures and others must be made with respect to the Framers' intent to keep revenue accountability in the House of Representatives. If the primary purpose of a measure is to raise revenue for governmental expenditures, it should not be exempt from the status of a revenue raising bill because it has another incidental or subsidiary effect or purpose. Nor should a measure be removed from the scope of the Origination Clause because it has a special or identified purpose to be funded by a tax on a certain class of people.

1. The primary purpose of the special assessment provision is to raise revenue for the general obligations of government. Congress provided for the assessments to be deposited into the Victims Assistance Fund. Victims of Crime Act of 1984, Pub. L. No. 98-473, § 1402(b), 98 Stat. 2171, 42 U.S.C. § 10601(b)(2). Other monies contributed to the Crime Victims Fund are (1) fines collected from persons convicted of offenses (with certain exceptions); (2) proceeds of forfeited appearance bonds, bail bonds and collateral collected under 18 U.S.C. § 3146 (penalties for failure to appear); and (3) any money ordered to be paid under 18 U.S.C. § 3671(c)(2)[15] (order of special forfeiture of collateral profits of crime). Pub. L. No. 98-473, § 1402(b), 98 Stat. 2170, 42 U.S.C. § 10601(b).

Congress also mandated that amounts in excess of a certain level "shall be deposited in the General Fund of the

[15] This section was renumbered as 18 U.S.C. § 3681(c)(2) by Pub. L. No. 99-646, Nov. 10, 1986, 100 Stat. 3600.

Treasury and shall not be a part of the Fund." Pub. L. No. 98-473, § 1402(c)(1), 98 Stat. 2171, 42 U.S.C. § 10601(c).[16] Initially no deposits were to be made into the fund after September 30, 1988. *Id.*[17] In addition, it was required that any sums awarded as part of a grant for victims assistance that remained unspent at the end of a fiscal year in which the grant was made, be expended in accordance with the grant during the next succeeding fiscal year.[18] Thereafter, the remaining unobligated sums "shall be returned to the General Fund of the Treasury." Pub. L. No. 98-473, § 1402(e), 98 Stat. 2171, 42 U.S.C. § 10601(e).

Nothing on the face of section 3013 reveals its underlying purpose. As recognized by the Court of Appeals, section 3013 does not limit or even describe the use of the collected funds [Pet. App. 8a]. The legislative history of the provision is direct:

> The purpose of imposing nominal assessment fees is to to generate needed income to offset the cost of the

[16] The "cap" was initially $100,000,000. It was raised in 1986 to $110,000,000. See Children's Justice Assistance Act of 1986, Pub. L. No. 99-401, § 102(b)(1), 100 Stat. 904. In 1988 this cap was raised to $125,000,000 through Fiscal Year 1991 and $150,000,000 through Fiscal Year 1994. See Anti-Drug Abuse Act of 1988, Pub. L. No. 100-690, § 7121(a), 102 Stat. 4419. The 1988 amendments also provided for the use of sums in excess of the prior cap of $110,000,000. Pub. L. No. 100-690, § 7121(b), 102 Stat. 4419. Petitioner notes that the cap was exceeded in Fiscal Year 1989 by $8 to $9 million [Pet. Br. note 21]. The 1988 amendments allocated the first $2.2 million excess to carry out the functions of the Judicial Branch under 18 U.S.C. § 3611 (payment of a fine) and § 3612 (collection of an unpaid fine).

[17] A November 18, 1988 amendment extended the time for deposits to September 30, 1994. Pub. L. 100-690, § 7121(a), 102 Stat. 4420.

[18] Grants made during Fiscal Year 1985 were available for two succeeding fiscal years. *See* 42 U.S.C. § 10601(e)(2).

> [Victims Assistance Fund] authorized under S. 2423. Although substantial amounts will not result, these additional amounts will be helpful in financing the program and *will constitute new income for the federal government.*

Sen. Rep. No. 497, 98th Cong., 2d Sess. 13-14 (1984) (emphasis added). This language demonstrates that the assessments were in part intended to contribute to a crime victims fund to be used to defray the costs of eligible victims assistance and compensation funds. Assistance to potentially large numbers of individuals who are victims of crime should be considered a general obligation and expenditure of government. The Government assumes the responsibility of prosecuting those accused of crime and, as is apparent from this legislation, the general responsibility to raise revenue for assisting victims of crime.

Congress also contemplated there would be general federal revenue.[19] In addition, the Crime Victims Fund has a limited life and there is a cap on the fund.[20] Any monies over the cap go into the General Treasury.

2. Even if the primary purpose of section 3013 is to help fund the Crime Victims Fund, and such Fund is not

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[19] The Court of Appeals noted the testimony of Assistant Attorney General Lois Herrington before the Senate Judiciary Committee:

> Well, when we first looked into this on the task force, we looked into the size of the source of the funding and whether it would be really worthwhile to go after this, how much it would cost us to get it. We figured out it would be approximately $2 million as a fund. There are also several other proposals within the Department of Justice looking into how to use it in the criminal justice area. Because of the increase in the fine collection in the last year, we did not use this as a source of funding. It is a very small amount in the total fine collection.

[Pet. App. 9a].

[20] *See supra* notes 16 and 17.

viewed as a general expenditure of government, section 3013 is still a revenue raising measure within the meaning of the Origination Clause. A bill designed for a special purpose (e.g., crime victim's assistance) is not excluded from the mandate of the Origination Clause under the "incidental revenue" or "other primary purpose" test unless it is designed to benefit those that are levied against. *See United States* v. *Norton; Twin City Nat'l Bank* v. *Nebecker; Millard* v. *Roberts*. The critical analysis is whether the special purpose is designed to benefit the class of individuals against whom the levy is made.

United States v. *Norton*, 91 U.S. 566 (1875), declared a bill that created a postal money order system was not a revenue raising measure within the meaning of the Origination Clause even though there were to be charges for money orders and revenue raised thereby. The Court found that nothing in the act warranted the belief that Congress had any other purpose than to "promote public convenience, and to ensure greater security in the transmission of money through the United States mails." *Id.* at 568. In fact, "a willingness [was] shown to sink money, if necessary, to accomplish [the stated purpose]." *Id.* The charges for money orders were to be incurred voluntarily in arms length exchanges and were not designed to make a profit for the government. *Id.* The critical distinction between the money order act and the special assessments provision is that those who paid the money received the benefit of using the money orders and the money order system.

Twin City Nat'l Bank v. *Nebecker*, 167 U.S. 196 (1897), upheld charges on notes in circulation of banking associations organized under the National Banking Act. The charges were imposed only on banking associations that voluntarily incorporated as national banks and circulated

notes and were apparently to pay "expenses necessarily incurred" in procuring the notes and other expenses in managing the system. *Id.* at 198-99. Again, the charges were paid by those receiving the benefit or use of the services provided by the Act. The only associations affected were those that voluntarily incorporated as national banks and circulated the notes.

Millard v. *Roberts*, 202 U.S. 429 (1906), upheld three statutes which provided for payments to certain railroads for the purpose of eliminating grade crossings and for a union railway station in the District of Columbia. The statutes provided for the payment of a sum of money to the railroad companies to be raised by tax on property in the District of Columbia. These charges were also to be matched to the costs and benefits conferred on the District of Columbia. "Whatever taxes [were] imposed [were] but a means to the purposes provided by the act." *Id.* at 437. Again, there was an element of contract between the District of Columbia and the railroad company. The railroad surrendered certain property rights and agreed to construct a station and the government agreed to pay a certain sum. "It [was] a simple case of bargain and sale, like any other purchase." *Id.* at 437.

A clear distinction exists between the special assessments provision and the "pay as you go" provisions upheld in *Norton*, *Nebecker* and *Roberts*. The primary purposes of the measures upheld in those three cases were to benefit those persons against whom the levy was made. By contrast, the revenue raised by the special assessments provision is not used to defray costs of a service or program that "benefits" those who pay the charge. It would be a different situation if the primary purpose of the assessments were to defray the costs of incarceration of

convicted defendants.[21] In such a situation, the class of persons against whom the levy is made directly "benefits" from the purpose of the legislation.

Failure to consider the relationship between the purpose of the measure and the class of individuals levied against would allow the Senate to avoid the restrictions of the Origination Clause by proposing various pieces of special purpose legislation to be funded by any unrelated but identified class of people. The Senate could then originate a series of special purpose bills and select classes of individuals to pay for the special purposes which would have the overall effect of controlling the purse strings of the government. This procedure would directly avoid the accountability concerns of the Origination Clause, contrary to the intent of the Framers and the language of the Constitution.

3. Contrary to Petitioner's suggestion, section 3013 is not a penalty provision. [Pet. Br. 21]. A "penalty" is an exaction imposed by statute as punishment for an unlawful act. A "tax" is an enforced contribution to provide for the support of government. *United States* v. *La Franca*, 282 U.S. 568 (1931).

Although an assessment is a direct consequence of a criminal conviction, it is not a penalty for the conviction. The fact that section 3013 exacts money only from convicted persons does not mean that its purpose is punitive. Congress may define the class of objects to be taxed. *Head Money Cases*, 112 U.S. 580, 594-95 (1884); *United States*

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[21] *See, e.g.*, Guideline § 5E1.2(i) ("subject to the [ability of the defendant to pay], the court shall impose an additional fine amount that is at least sufficient to pay the costs to the government of any imprisonment, probation, or supervised release ordered"), United States Sentencing Guidelines at 5.20 (Nov. 1, 1989).

v. *Ptasynski*, 462 U.S. 74, 82 (1983). The mere fact that a pecuniary detriment is inflicted in consequence of a crime does not mean that it is a penalty. *Murphy* v. *United States*, 272 U.S. 630, 632 (1926). As a result, the class of individuals levied against is not determinative.

Section 3013 is not located in the sentencing provisions of Title 18 nor is it listed as a sentencing option. Since its passage, the statute itself has been placed in Chapter 201 of Title 18 of the United States Code entitled "General Provisions." Offenses against the United States are punishable by (1) probation, (2) a fine, (3) imprisonment, (4) forfeiture, (5) a notice to victims, or (6) an order of restitution. See 18 U.S.C. § 3551.[22] Probation may be for up to five years for a felony and a misdemeanor and up to one year for an infraction. 18 U.S.C. § 3561 (post-November 1, 1987). Imprisonment may be up to the statutory maximums provided in each criminal statute. Many offenses now carry statutory minimums, e.g., 18 U.S.C. §§ 922(g), 924(e) (armed career criminal punishable by fifteen years to life, no probation or parole); 21 U.S.C. § 841(b)(1)(A) (possession with intent to distribute large amounts of various controlled substances punishable by ten years to life, no probation, or parole). Fines for individuals may be up to the greatest of that reflected in the statute of conviction or $250,000 for a felony or misdemeanor resulting in death, $100,000 for a Class A misdemeanor, $5,000 for a Class B or C misdemeanor, and $5,000 for an infraction. See 18 U.S.C. § 3571.[23]

[22] 18 U.S.C. § 3551 took effect November 1, 1987 along with the provisions of the Sentencing Reform Act of 1984, Pub. L. No. 98-473, Title II, § 212 (a)(2), 98 Stat. 1988. Before that time, a defendant could receive a fine, imprisonment or probation or a combination as provided in Title 18 of the United States Code. Restitution could be ordered as a condition of probation or under the Victim Witness Protection Act of 1982. Pub. L. No. 97-291, § 5(a), 96 Stat. 1253.

Penalties in criminal cases traditionally have a relationship to the severity of the offense, the harm inflicted and the criminal history of the offender. Other than the basic gradations for felonies or misdemeanors and individuals or organizations, the special assessment does not vary depending on the severity of the offense or background of the offender. A defendant convicted of murder receives the same assessment as the defendant convicted of cashing a stolen social security check.

The mandatory assessment of $25 or $50[24] can hardly be considered a penalty where the stature is not within the sentencing provisions, the assessment is not a sentencing option and the amount is minuscule when compared to the potential penalties that can be imposed.[25] *Cf. United States* v. *Constantine*, 296 U.S. 223, 227 (1935) (the amount of the tax is significant of penal and prohibitory intent rather than the gathering of revenue; where the additional sum to be collected is "grossly disproportionate" to the amount of the normal tax, the con-

[23] Fines between January 1, 1985 and November 1987 were governed by 18 U.S.C. § 3623, Pub. L. No. 98-596, 98 Stat. 3137.

[24] In November 1988, the amounts were changed to range between $5 to $25 for misdemeanor level offenses (individual defendants), $25 to $125 for misdemeanor offenses by organizational defendants, $50 for a felony offense (individual defendants) and $200 for a felony offense by an organizational defendant. Pub. L. No. 100-690, § 7085, 102 Stat. 4408.

[25] The statute of limitations for collection of special assessments is now five years compared to twenty years for criminal fines. *See supra* note 1.

clusion must be that the purpose is to impose a penalty as a deterrent and a punishment for unlawful conduct).

Finally, while various references in the legislative history are to "penalty" assessments, it is the purpose of the "detriment" that controls, not the label. *United States* v. *La Franca*, 282 U.S. at 572; *United States* v. *Constantine*, 296 U.S. at 294. Petitioner's reliance on the label is also contradicted by the fact the statute as enacted refers to *special* not *penalty* assessments.

B. Section 3013 Originated In The Senate.

The special assessment provision at issue in this case was enacted into law on October 12, 1984 as part of the Comprehensive Crime Control Act of 1984. The Comprehensive Crime Control Act was one of several unrelated titles of H.R.J. Res. 648, enacted at Pub. L. No. 98-473. Petitioner agrees that the special assessment provision enacted into law on October 12, 1984 was not contained in H.R.J. Res. 648 at the time it passed the House and was sent to the Senate. [Pet. Br. 24]. Petitioner also agrees that it was the Senate that added section 1405 (enacted as 18 U.S.C. § 3013) to H.R.J. Res. 648. [Pet. Br. 24]. The dispute is over what the term "originate" means.

Petitioner is correct that on September 25, 1984, the House passed H.R.J. Res. 648, its version of the Continuing Appropriations Resolution for Fiscal Year 1985 [Pet. Br. 24]; 130 Cong. Rec. 26,837-26,838. As noted, at the time H.R.J. Res. 648 was passed by the House, it did not include a special assessment provision. The amendment adding the special assessment provision was made by the Senate on October 4, 1984 as section 1405 of H.R.J. Res. 648. 130 Cong. Rec. S13,520-S13,544. On October 10, 1984, the House adopted a version of H.R.J. Res. 648

including the Senate amendments and the Senate then passed it on October 11, 1984. The final version of H.R.J. Res. 648 became law on October 12, 1984 as Pub. L. No. 98-473.

Petitioner focuses on the passage of H.R. 5690, a bill that was passed by the House on October 2, 1984, which contained the precise special assessment language ultimately added by the Senate to H.R.J. Res. 648. However, H.R. 5690 never became law.

The most practical, logical and reasonable test for determining where a bill *originated* is to look to which body placed it into the legislation that was ultimately enacted.[26] Unless the Court follows this bright line test for determining the *origination* of a bill, there could be endless confusion over who thought of an idea first and

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[26] Although the "enrolled bill doctrine," *see, e.g., Field* v. *Clark*, 143 U.S. 649 (1892), was not raised by Petitioner, it is worthy of mention that such a test would not be appropriate in determining violations of the Origination Clause. Under the enrolled bill doctrine, a validly passed revenue raising bill could be struck as a violation of the Origination Clause if it carried a Senate bill label on its face. For example, the House could amend a Senate bill by adding a revenue measure. If the enrolled bill doctrine controlled, the face of the bill carrying the Senate bill label would result in striking an otherwise proper revenue raising provision. The doctrine should not be applied where the issue concerns a constitutional question, particularly when the constitutional question concerns where the bill originated. *See, e.g., Opinion of the Justices*, 223 A.2d 59, 61 (Del. 1967) (declining to apply enrolled bill doctrine because origination issues concerned a constitutional question); Medina, *supra* note 6, at n.187; Comment, *The Origination Clause, the Tax Equity and Fiscal Responsibility Act of 1982, and the Role of the Judiciary, supra* note 13, at 454-59; *see also Christoffel* v. *United States*, 338 U.S. 84 (1949).

who drafted the language.[27] Contrary to Petitioner's argument, this bright line test would not preclude the House from adopting a given revenue measure if the Senate passed the bill first. [See Pet. Br. 25 at note 24]. The House would simply exercise its prerogative to return the measure to the Senate and insert its own language. *See, e.g.*, 3 L. Deschler, *Deschler's Precedents of the United States House of Representatives*, §§ 13-18, at 292-314 (1974); 2 Hinds, *supra* p. 8, §§ 1484, 1485, 1495, at 943-45, 967-69. However, under Petitioner's "who passed the language first" rule, the House could be forever precluded from originating a bill the Senate wrote and passed first. For example, the Senate could pass a bill the House had under consideration and thereby preclude the House from *originating* that bill.

Predecessor legislation should not be relevant to an inquiry under the Origination Clause. Not only could such an inquiry block the House from originating revenue bills, it could also result in long and confusing debates over whether representatives of the House or the Senate thought of an idea first or had even referred a certain idea to committee review first.[28]

C. The Senate's Addition Of Section 3013 To H.R.J. Res. 648 Was Not A Permissible Amendment.

The Senate may amend a bill originating in the House as long as the amendment remains germane to the subject

[27] Petitioner suggests that Congressman Rodino thought of the idea first. [Pet. Br. 25 at note 25]. In fact, Senator Heinz introduced the original special assessment provision on March 8, 1983. *See* S. 704, 129 Cong. Rec. 4283-4286. This "bill chasing" illustrates that it would be wholly inappropriate to consider "origination" in other than a bright line fashion.

[28] Even under the predecessor legislation test, the special assessments provision originated in the Senate as Senator Heinz was the first to introduce such legislation. *See supra* note 27.

matter of the House bill. *Flint* v. *Stone Tracy Co.*, 220 U.S. 107, 143 (1911). If the House originated bill is a "revenue raising bill," the Senate may make revenue raising amendments. *Id.*; *Texas Ass'n of Concerned Taxpayers, Inc.* v. *United States*, 772 F.2d 163, 168 (5th Cir. 1985) ("subject matter" appears to require that both the amendment and the amended portion address revenue collection); *Armstrong* v. *United States*, 759 F.2d at 1381-82; *Wardell* v. *United States*, 757 F.2d at 205; *Heitman* v. *United States*, 753 F.2d at 35; *Liljenfeldt* v. *United States*, 588 F. Supp. 966 (E.D. Wis.), *aff'd*, 753 F.2d 1077 (7th Cir. 1984); *Rowe* v. *United States*, 583 F. Supp. 1516 (D. Del.), *aff'd*, 749 F.2d 27 (3d Cir. 1984); 2 Hinds, *supra* p. 8, § 1489 at 949-53.

The critical inquiry then is whether H.R.J. Res. 648 was a "revenue raising bill" within the meaning of the Origination Clause. Petitioner incorrectly argues the Court of Appeals misread H.R.J. Res. 648 and "ignored the fact that it was also a continuing appropriations resolution." [Pet. Br. 27]. The Court of Appeals recognized that H.R.J. Res. 648 was a continuing appropriations resolution and correctly concluded that "House joint resolution 648 did not deal with the raising of revenue." [Pet. App. 13a, 14a].[29] Regardless of whether the court consid-

[29] Petitioner did not make any argument to the Court of Appeals regarding the effect of the status of H.R.J. Res. 648 as a continuing appropriations bill. Petitioner also did not argue in the Court of Appeals that section 3013 was a permissible amendment to H.R.J. Res 648. Likewise, Petitioner did not challenge the ruling of the Court of Appeals on this issue in its petition for rehearing and suggestion for rehearing *en banc* and did not suggest in its petition for writ of certiorari that the Court of Appeals had misread the status of H.R.J. Res. 648. The petition for writ of certiorari also did not challenge the ruling of the Court of Appeals that section 3013 was not a permissible amendment to H.R.J. Res. 648. Prudential considerations may warrant a refusal to consider the argument now. *Cf. Steagald* v. *United States*, 451 U.S. 204, 209 (1981); *Illinois* v. *Gates*, 462 U.S. 213, 217 (1983).

ered the amended portion of the bill to be for crime control, its decision was correct in that none of the provisions of H.R.J. Res. 648 were "revenue raising." As discussed *supra*, II.A., revenue bills within the meaning of the Origination Clause are "those that levy taxes in the strict sense of the word, and are not bills for other purposes which may incidentally create revenue." See *Norton, Nebecker, supra*.

Petitioner attempts to cloud the issue by focusing on the debate between the House and Senate over which body may originate appropriations bills. [Pet. Br. 28]. Under the guise of suggesting that this Court should not "endorse either view," Petitioner implicitly equates appropriations bills with revenue raising bills by exempting them from Origination Clause scrutiny.[30] To allow the Senate unrestrained authority to amend an appropriations bill is tantamount to allowing the Senate to originate a revenue bill by simply making it an amendment to an appropriations bill. This authority would either eliminate the constitutional requirement that revenue bills originate in the House of Representatives or it would mean

[30] This implicit holding would be contrary to the intent of the Framers. Part of the "Great Compromise" during which the state's representation was resolved, produced a version of the Origination Clause that provide "all Bills for raising *or appropriating money* . . . . shall originate in the first branch of the Legislature." 1 M. Farrand, *Records of the Federal Convention of 1787* at 524, 543-47 (1937) (emphasis added). This clause was stricken from the draft. 2 Farrand, *supra* p. 15, at 223-23. Similar language, "all bills for raising money for the purposes of revenue, *or for appropriating the same* shall originate in the House of Representatives" (emphasis added), was proposed later, 2 Farrand, *supra* p. 15, at 266, but again defeated. 2 Farrand, *supra* p. 15, at 280. The clause without limiting appropriations to House origination ultimately passed. 2 Farrand, *supra* p. 15, at 552.

that appropriations bills are revenue bills. Thus, the holding Petitioner seeks would in fact resolve the debate over whether appropriations bills are revenue bills, the resolution of which is not required by this case.

The issue before this Court is not whether the Senate may properly amend or even originate an appropriations bill. The issue is whether section 3013 was a permissible amendment to a House originated "revenue raising" bill. Nothing in H.R.J. Res. 648 as it originated in the House of Representatives was *revenue raising* within the meaning of Art. I, § 7, cl. 1.

CONCLUSION

The judgment of the Court of Appeals should be affirmed.

Respectfully submitted,

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